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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF MINERAL RESOURCES

NO. 611

15 JUNE 2018

**PUBLICATION OF THE DRAFT BROAD-BASED SOCIO-ECONOMIC
EMPOWERMENT CHARTER FOR THE MINING AND MINERALS
INDUSTRY, 2018 (herein referred as the draft Mining Charter, 2018)
FOR PUBLIC COMMENT**

I, Samson Gwede Mantashe, Minister of Mineral Resources, hereby publish the draft Broad Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry, 2018 for public comments.

Interested and affected parties are hereby invited to submit written representations on the draft Mining Charter, 2018. The aforesaid representations must be marked for the attention of Ms Sibongile Malie and hand delivered, emailed or sent by post, within 30 days of publication of this notice to the following addresses;

70 Mentjies street
Trevenna Campus
Sunnyside
0007

OR

Private bag X59
Arcadia
0001

Email address: Sibongile.Malie @dmr.gov.za

A copy of the draft Mining Charter, 2018 is attached hereto.

Mr Samson Gwede Mantashe
Minister: Department of Mineral Resources
Date: 15 June 2018

**DRAFT BROAD-BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE
MINING AND MINERAL INDUSTRY, 2018.**

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PREAMBLE

The systematic marginalization of the majority of South Africans, facilitated by exclusionary policies of the apartheid regime, prevented Black Persons, as defined herein, from owning the means of production and from meaningful participation in the mainstream economy. Through its continued support and implementation of discretionary policies and practices, the mining and minerals sector, which dominated the South African political and socio-economic order, brought about inequalities in the mining industry.

To redress these historic inequalities, and thus give effect to *section 9* (equality clause) of the *Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)* (“*Constitution*”), the democratic government enacted, *inter alia*, the *Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)* (“*MPRDA*”).

The primary objective of the *MPRDA* is to ensure the attainment of Government objectives of redressing historical, socio-economic inequalities and to ensure broad based and meaningful participation of Black Persons in the mining and minerals industry. To this end, *section 100 (2) (a)* of the *MPRDA* empowers the Minister to develop a Broad Based Black Economic Empowerment Charter for the South African Mining and Minerals Industry (“*Mining Charter*”) as a regulatory instrument to effect transformation by meeting specific targets within specified timeframes.

In 2009, the Department conducted a comprehensive assessment to ascertain the progress of transformation in the mining industry against the objectives and agreed targets contained in the *Mining Charter*. The assessment revealed a number of shortcomings in the mining industry’s implementation of the various elements of the Charter, viz. Ownership,

Procurement, Employment Equity, Beneficiation, Human Resource Development, Mine Community Development, and Housing and Living Conditions. To address these shortcomings, the *Mining Charter* was amended to streamline and expedite the attainment of its objectives. In addition to this, the amended *Mining Charter* introduced the sustainable development element, which sought to ensure sustainable transformation and growth of the mining industry.

In 2014, a decade after the *Mining Charter* came into effect, the Department conducted a second assessment of mining companies' compliance with agreed targets contained in the *Mining Charter*. This second assessment revealed the following:

- Despite a noticeable improvement in levels of compliance, the mining industry is still unacceptably far from being fully transformed.
- Notwithstanding a paucity of companies of all sizes that have fully embraced the spirit of the *Mining Charter*, extremely varied performance by most companies suggests a generally compliance-driven mode of implementation, primarily designed to protect (their) the latter's "social license to operate".
- Whereas the *MPRDA* has effectively transferred ownership of the mineral wealth of the country to all the people of South Africa under the custodianship of the State, a proliferation of communities living in abject poverty continues to be characteristic of the surroundings of mining operations.
- Limited progress has been made in embracing broad-based empowerment ownership to achieve meaningful economic participation of Black South Africans. The trickled flow of benefits which sought not only to service debt, but also to provide cash-flow directly

to BEE partners, is wholly inadequate to this end, the interests of mineworkers and communities are typically held in nebulously defined Trusts, which constrain the flow of benefits to intended beneficiaries. As a result, the mining industry has broadly been faced with increasing tensions from both workers and host communities.

It is against this backdrop that Government initiated another comprehensive review process in 2015 aimed at strengthening the efficacy of the *Mining Charter* as a tool for effecting broad based and meaningful transformation of the mining and minerals industry.

The review process takes into account the need to align and integrate Government policies to remove ambiguities in respect of interpretation and create regulatory certainty. In this regard, the reviewed *Mining Charter* is aligned to the provisions of the *Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (BBBEE Act)* and the *Codes of Good Practice ("DTI Codes")*, *Employment Equity Act, 1998 (Act No. 55 of 1998)* and other relevant regulatory frameworks.

In reviewing the *Mining Charter*, it is recognised that competitiveness, growth and transformation are mutually re-enforcing. To this end, the reviewed *Mining Charter* introduces new definitions, terms and targets to harmonise with the *BBBEE Act* and the *Dti Codes*. The alignment of these policies is intended to ensure meaningful participation of Black Persons in accordance with the objects of the *MPRDA* and to provide for policy and regulatory certainty thereby facilitating transformation and growth of the mining industry.

VISION

To facilitate sustainable transformation, growth and development of the mining industry.

MISSION

To give effect to *section 100 (2) (a) of the MPRDA, section 9 of the Constitution* and harmonise Government's transformation policies.

DEFINITIONS

This section defines terms and concepts which are used in the Mining Charter.

“BBBEE Act” means Broad-Based Black Economic Empowerment Act 2003 (Act No. 53 of 2003);

“BEE Entrepreneur” refers to Black enterprises that are at least 51% owned by black persons in which Black persons hold at least 51% of exercisable voting rights and 51% of economic interest or an organ of State excluding mandated investments;

“BEE shareholding” refers to host community, qualifying employees’ and BEE entrepreneurs’ shareholding;

“Beneficiation” for purposes of the Mining Charter beneficiation means the transformation, value addition or downstream beneficiation of a mineral or mineral product (or a combination of minerals) to a higher value product, over baselines to be determined by the Minister, which can either be consumed locally or exported;

“BEE compliant company” means a company with a minimum B-BBEE level 4 status in terms of the BBBEE Codes of Good Practice and minimum 26% black ownership;

“Black Persons” is a generic term which means Africans, Coloureds and Indians-

- (a) Who are citizens of the Republic of South Africa by birth or descent; or
- (b) Who became citizens of the Republic of South Africa by naturalisation before 27 April 1994;
- (c) a juristic person which-

- (i) is managed and controlled by a person contemplated in paragraph (a) and (b) and the persons collectively or as a group own and control majority of the issued share capital or members' interest, and are able to control the majority of the members' vote;

“Core and critical skills” refers to science, technology, engineering and mathematical skills across organisational levels within both production and operational part of a mining company;

“Demographics” means the numerical characteristics of a national and/or provincial population (e.g. population size, age, structure, gender, race, etc.);

“Economic Interest” means the entitlement of BEE shareholders to dividends, capital gains and other economic rights of a shareholder;

“Effective ownership” means the meaningful participation of Black persons in the unencumbered net value ownership, voting rights, economic interest and management control of mining operations;

“Existing right holder” refers to a holder of a mining right granted prior to the coming into operation of the Mining Charter, 2018;

“Foreign supplier” means a foreign controlled or registered company, supplying the South African mining industry with mining goods or services which does not have at least level 4 status in terms of the BBBEE Codes of Good Practice and 26% Black ownership;

“Historical BEE Transactions” refers to BEE Transactions concluded prior to the coming into operation of the Mining Charter, 2018;

“Host community” refers to a community/ies in the local, district, metropolitan municipality or traditional authority within which the mining area as defined in the MPRDA is located;

“Integrated producers” refers to a right holder that beneficiates minerals mined by such right holder as part of its business activities;

“Labour sending areas” refers to an area from which a right holder sources majority of its current or historical South African employees;

“Leviable amount” is as defined in the Skills Development Levy Act, 1999 (Act No. 9 of 1999);

“Meaningful economic participation” refers to the following key attributes:

- (a) Clearly identifiable partners in the form of BEE entrepreneurs, host communities and qualifying employees;
- (b) A percentage of unencumbered net value based upon the time graduation factor which has accrued to BEE shareholders;
- (c) A percentage of dividends declared, or other monetary distributions or trickle dividends paid to BEE shareholders, subject to the provisions of relevant legislation;
- (d) BEE shareholders with vested interest can leverage equity in proportion to such vested interest over the life of the transaction to reinvest in other mining projects; and
- (e) BEE shareholders with full shareholder rights entitling them to full participation at annual general meetings, exercising of voting rights in all aspects including but not limited to trading and marketing of the commodity herein affected and anything incidental thereto regardless of the legal form of the instrument used.

{ x }

“**Mining Charter**” means the Broad-Based Socio-Economic Empowerment Charter for the Mining and Mineral Industry developed in terms of section 100 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

“**Mining Goods**” refers to consumable and capital goods used by a right holder or by a contractor on behalf of a right holder;

“**MPRDA**” means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

“**Net value**” refers to the value of equity which accrues to black shareholders over a period of time calculated as the difference between the market value of shares held by black shareholders at the measured date, less the amount of loans relating to the acquisition of shares outstanding at the measured date;

“**Pending applications**” refers to applications lodged and accepted prior to the coming into operation of the Mining Charter, 2018;

“**Qualifying employees**” for the purposes of the ownership element refers to employees of a mining company excluding employees who already hold shares in the same company as a condition of their employment agreement except where such condition is a Mining Charter requirement;

“**Right holder**” refers to a holder of a mining right granted in terms of the MPRDA;

“**Services**” refers to services contracted by a right holder, or by a contractor on behalf of a right holder, which includes but not limited to, mining production services, drilling, mineral trading, mineral marketing, legal, shipping, transportation, information technology services,

security, payroll, finance, medical, consulting, cleaning, insurance and any other services which are supplementary to the mine;

“**Social and Labour Plan**” refers to the Social and Labour Plan contemplated in section 23 of the MPRDA;

“**South African manufactured goods**” refers to goods with a minimum 60% of the value added during the assembly or manufacturing of the product is created in the Republic. The calculation of value added excludes profit mark-up, intangible value such as brand value and overheads;

“**the Republic**” means the Republic of South Africa;

“**Trickle dividend**” -

(a) In relation to host communities and qualifying employees, it refers to a dividend that has a fixed dividend rate contributed to a trust for host communities and a structure elected by qualifying employees and is redeemable by a right holder when ordinary dividends are declared;

(b) In relation to BEE entrepreneurs, it refers to a dividend with a cash flow to BEE entrepreneurs throughout the term of the investment where a percentage of such cash flow should be used to service the funding of the structure while the remaining amount is paid to BEE entrepreneurs; and

“**Youth**” for the purposes of the *Mining Charter*, refers to young South African citizens between the ages of 18 to 35 years old based on national or provincial demographics.

SECRET AND STRICTLY CONFIDENTIAL**1. OBJECTIVES OF MINING CHARTER**

The “*Mining Charter*”, is a regulatory government instrument designed to effect mutually symbiotic sustainable growth and broad based and meaningful transformation of the mining industry. The *Mining Charter* seeks to achieve the following objectives:

- (a) Recognise the internationally accepted right of the State to exercise sovereignty over all its mineral resources;
- (b) Deracialise ownership of the mining industry by redressing the imbalances of past injustices;
- (c) Substantially and meaningfully expand opportunities for Black Persons to enter the mining and minerals industry and to benefit from the exploitation of the nation’s mineral resources;
- (d) Utilise and expand the existing skills base for the empowerment of Black Persons;
- (e) Advance employment and diversify the workforce to achieve competitiveness of the industry and productivity;
- (f) Enhance the social and economic welfare of mine communities and major labour sending areas in order to achieve social cohesion;
- (g) Promote sustainable development and growth of the mining industry;
- (h) Catalyse growth and development of local mining inputs sector by leveraging the procurement spend of the mining industry; and
- (i) Promote beneficiation of South Africa’s mineral commodities.

SECRET AND STRICTLY CONFIDENTIAL**2. ELEMENTS OF THE MINING CHARTER****2.1 OWNERSHIP**

In order to give effect to meaningful economic participation by and integration of Black Persons into the mainstream economy and to ensure Black Persons' effective ownership of the country's mineral resources, a right holder must comply with the following:

2.1.1 EXISTING MINING RIGHTS

- 2.1.1.1 An existing right holder who achieved and maintained a minimum of 26% BEE shareholding at the date of publication of the Mining Charter, 2018, shall be recognised as compliant and must within a period of 5 (five) years from the date of coming into effect of the said Mining Charter, supplement BEE shareholding to a minimum of 30%.
- 2.1.1.2 An existing right holder who at any stage during the existence of a mining right achieved a minimum of 26% BEE shareholding, and whose BEE partner/s has/ve since exited the BEE transaction shall be recognised as compliant and must within a period of 5 (five) years from the date of coming into operation of the Mining Charter, 2018, supplement their BEE shareholding from 26% to a minimum of 30%.
- 2.1.1.3 The recognition of continuing consequences shall include historical transactions concluded on units of production, share assets including all historical BEE transactions which formed the basis upon which new order mining rights were granted.

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- 2.1.1.4 The historical transactions referred to in paragraph 2.1.1.3 above may be at a company or mining right level.
- 2.1.1.5 The recognition of continuing consequences in respect of existing and historical BEE transactions shall not be transferrable and shall lapse upon transfer of such mining right or part thereof.
- 2.1.1.6 The recognition of continuing consequences shall not apply to an application for a new mining right and renewal of a mining right enjoying such recognition.
- 2.1.1.7 An existing right holder who did not achieve a minimum of 26% BEE shareholding by the date of commencement of the *Mining Charter, 2018*, shall not enjoy the recognition of continuing consequences and must be subjected to the MPRDA corrective processes immediately.
- 2.1.1.8 An existing right holder referred to in paragraph 2.1.1.7 must within a period of 5 (five) years from the date of coming into operation of the *Mining Charter, 2018* supplement BEE shareholding to a minimum of 30% BEE shareholding.

2.1.2 PENDING APPLICATIONS

- 2.1.2.1 A pending application lodged and accepted prior to the coming into operation of the *Mining Charter, 2018* shall be processed and granted in terms of the requirements of the *Mining Charter, 2010* with a minimum of 26% Black Person's shareholding.
- 2.1.2.2 A right holder of a mining right contemplated in 2.1.2.1 must within a period of 5 (five) years from the effective date of such mining right supplement BEE shareholding to a minimum of 30%.

SECRET AND STRICTLY CONFIDENTIAL**2.1.3 NEW MINING RIGHTS**

- 2.1.3.1 A new mining right must have a minimum of 30% BEE shareholding which shall include economic interest plus corresponding percentage of voting rights, per mining right or in the mining company which holds a mining right.
- 2.1.3.2 A minimum of 30% BEE shareholding must be distributed in the following manner:
- (i) A minimum of 8% of which 5% is non-transferable free carried interest to qualifying employees within a period of five (5) years from the effective date of a mining right.
 - (ii) A minimum of 8% of which 5% is non-transferable free carried interest to host communities (in the form of a community trust as prescribed) within 5 years from the effective date of a mining right.
 - (iii) A minimum of 14% shares to a BEE entrepreneur.
- 2.1.3.3 A right holder shall pay a trickle dividend equal to a minimum of 1% of Earnings Before Interest, Taxes, Depreciation and Amortisation (EBITDA) from the sixth year of a mining right to qualifying employees and host communities respectively, until dividends are declared;
- 2.1.3.4 The annual 1% of EBITDA payment referred to in paragraph 2.1.3.3 shall be payable to qualifying employees and host communities at any point within a period of twelve (12) months where dividends are not declared;
- 2.1.3.5 Host communities and qualifying employees shall have representation on the board or advisory committee of a right holder.

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2.1.3.6 Where a BEE entrepreneur's shareholding is disposed, a right holder's empowerment credentials shall be recognised for the duration of the mining right, provided that:

- (i) A right holder is compliant with the requirements of this element at the time of disposal;
- (ii) The BEE entrepreneur's partner must have held the empowerment shares for a minimum period equivalent to a third of the duration of the mining right and unencumbered net value must have been realised; and
- (iii) The recognition of empowerment credentials shall only be applicable to measured effective ownership which has vested to a BEE entrepreneur.

2.1.3.7 The BEE entrepreneur must, subject to paragraph 2.1.3.4, re-invest a minimum of 40% of the proceeds from the disposed equity in the mining industry.

2.1.3.8 The prescribed board and executive/top management targets under employment equity element must include black shareholders in line with the MPRDA's objective for black person's active participation in the management and control of the mining industry.

2.1.3.9 The BEE entrepreneur shareholding shall vest in the following manner:

- (a) 15% in the first quarter of the duration of a mining right;
- (b) 50% in the second quarter of the duration of a mining right;
- (c) 70% in the third quarter of the duration of a mining right; and
- (d) 100% by the end of the last quarter of the duration of a mining right.

The prescribed minimum 30% target shall apply for the duration of a mining right.

SECRET AND STRICTLY CONFIDENTIAL**2.1.4 EQUITY EQUIVALENCE AGAINST THE OWNERSHIP TARGET**

South Africa adopted a strategy on mineral beneficiation to give effect to the National Industrial Policy Framework. To this end, this element makes the following provisions for an equity equivalent mechanism in lieu of BEE entrepreneur shareholding as follows:

- a) A right holder may claim the equity equivalent mechanism against a maximum of 11 percentage points of BEE shareholding.
- b) Equity Equivalent may only be claimed against a portion of BEE entrepreneur shareholding.
- c) A right holder must submit an Equity Equivalent Plan to the Department for approval as outlined in the *Mining Charter* implementation guidelines.
- d) The following activities undertaken by a right holder will entitle the right holder to apply for equity equivalent credits:
 - i. Mineral ore or mineral products supplied to independent local beneficiation entities at a discount to the mine gate price.
 - ii. Portion of an integrated producer's production that is beneficiated.
 - iii. Mineral ore supplied to black owned beneficiation entities at a discount to the mine gate price.
 - iv. Investments in locally based mineral beneficiation entities.
 - v. Any other existent beneficiation related activities undertaken or investment made since 2004.
- e) A right holder must submit a progress report against the approved equity equivalent plan to the Department at the end of each calendar year.

SECRET AND STRICTLY CONFIDENTIAL**2.2 INCLUSIVE PROCUREMENT, SUPPLIER AND ENTERPRISE DEVELOPMENT**

Procurement of South African manufactured goods and services presents opportunities to expand economic growth that allows for the creation of decent jobs and widens scope for market access of South African goods and services. A right holder is required to promote economic growth through the development or nurturing of small medium and micro enterprises and suppliers of mining goods and services to the mining industry and other sectors of the economy. To achieve this, a right holder must identify all goods and services that will be required in its operations and ensure that its procurement policies adhere to the following criteria:

2.2.1 MINING GOODS

A minimum of 70% of total mining goods procurement spend must be on South African manufactured goods. The above mentioned 70% of the total mining goods procurement spend shall be apportioned in the following manner:

- (a) 21% of total mining goods procurement budget must be spent on South African manufactured goods by Black entrepreneurs;
- (b) 5% of total mining goods procurement budget must be spent on South African manufactured goods by BEE women entrepreneurs or 51% youth owned and controlled enterprises; and
- (c) 44% of total mining goods procurement budget must be spent on South African manufactured goods by BEE compliant company.

SECRET AND STRICTLY CONFIDENTIAL**2.2.2 SERVICES**

A minimum of 80% of the total spend on services (excluding non-discretionary expenditure) must be sourced from South African companies. The above mentioned 80% of the total services procurement spend shall be apportioned in the following manner:

- (a) 60% of the total services budget must be spent on BEE entrepreneurs;
- (b) 10% of total services budget must be spent on BEE women entrepreneurs with or 51% youth owned and controlled enterprises; and
- (c) 10% of total services budget must be spent on a BEE compliant company.

The above-mentioned procurement targets must be complied with within a period of five (5) years as outlined in the transitional arrangements.

A right holder must ensure that the terms and conditions offered to BEE entrepreneurs including BEE women entrepreneurs or youth owned enterprises are not less favourable than those offered to other suppliers.

All procurement expenditure reported must be the actual expenditure incurred by a right holder.

2.2.3 VERIFICATION OF LOCAL CONTENT

A right holder shall submit an annual Mining Charter report and provide proof of local content for mining goods in the form of certification from the South African Bureau of Standards (SABS) or any other entity designated by the Minister.

SECRET AND STRICTLY CONFIDENTIAL**2.2.4 ENTERPRISE AND SUPPLIER DEVELOPMENT**

The purpose for implementation of supplier and enterprise development is to strengthen local procurement, enhance the ease and cost competitiveness of sourcing mining goods and services and build South Africa's industrial base in critical sectors of production and value addition.

A right holder may invest in enterprise and supplier development against which it may offset its procurement element obligations as follows:

2.2.4.1 MINING GOODS

(a) Up to 5 % of the total procurement budget on mining goods may be offset using supplier development.

2.2.4.2 SERVICES

(a) Up to 10% of the total procurement budget on services (excluding non-discretionary expenditure) may be offset using supplier and enterprise development.

2.2.4.3 Percentages referred to in 2.2.4.1 and 2.2.4.2 must be implemented as follows:

- (a) Supplier and Enterprise Development must only be invested on BEE entrepreneurs with a turnover of less than R50 million per annum;
- (b) Investment on Supplier Development may not be claimed as expenditure on Enterprise Development;
- (c) There must be a written agreement between a right holder and the recipient Supplier or Enterprise Development; and

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- (d) The contract between a right holder and the recipient supplier must be a minimum of 5 years.

2.2.5 RESEARCH AND DEVELOPMENT

A right holder must spend a minimum of 70% of its total research and development budget on South African based research and development entities. A minimum 50% of the 70% indicated above must be spent at South African Public Academic Institutions or Science Councils.

2.2.6 PROCESSING OF SAMPLES

- (a) A right holder must utilise South African based companies for the analysis of 100% of all mineral samples across the mining value chain, except in cases where samples are analysed for calibration of local laboratories.
- (b) A right holder may not conduct sample analysis using foreign based facilities or companies without the prior written consent of the Minister as prescribed in the *Mining Charter* implementation guideline.

2.2.7 CONTRIBUTION BY FOREIGN SUPPLIERS

A Foreign Supplier must contribute a minimum of 0,5% of its annual turnover generated from local mining company/ies towards development of suppliers to be directed to the Mandela Mining Precinct for research purposes.

SECRET AND STRICTLY CONFIDENTIAL**2.2.8 SUBMISSION OF DATA**

A right holder must submit data on its annual purchases as prescribed in the implementation guidelines, using a common product classification system, to the Department.

2.3 HUMAN RESOURCE DEVELOPMENT

The mining industry is knowledge based and thus hinges on Human Resource Development, constituting an integral part of social transformation at workplace and sustainable growth. It is therefore the objective of the Mining Charter to produce a skilled, trained and diverse workforce that meets the demands of a modern mining industry, develop skills that enhance productivity of the workforce and improve the employment prospects of persons previously disadvantaged by unfair discrimination and development of entrepreneurial skills that not only improve the livelihoods in our society, but also create mining-led local and regional economic diversification.

In this regard, a right holder must invest 5% of the leviable amount (excluding the mandatory statutory skills levy) on essential skills development. To achieve this objective, a right holder must invest the 5% in the following manner:

- (a) Invest 3.5% of the leviable amount on essential skills development activities such as science, technology, engineering, mathematics skills as well as artisans, bursaries, literacy and numeracy skills for employees and non-employees (community members);

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- (b) Invest 1.5% of the leviable amount towards South African Public Academic Institutions, Science Councils or research entities for the development of solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation as well as environmental conservation and rehabilitation;
- (c) Research and Development expenditure contemplated in paragraph (b) above must qualify for the R&D Tax Allowance (Income Tax Act, Section 11D); and
- (d) The skilling and research investment referred to in paragraph (a) and (b) respectively must be apportioned in proportion with national or provincial demographics.

2.4 EMPLOYMENT EQUITY

The purpose of this element is to achieve equity in the workplace by promoting equal opportunity and fair treatment in employment through elimination of unfair discrimination; and implementing affirmative action measures to redress disadvantages in the workplace experienced by designated groups, in order to ensure their equitable representation in all occupational levels of the workforce.

In order to be consistent with the *Employment Equity Act*, workplace diversity and equitable representation at all levels are catalysts for social cohesion, transformation and competitiveness of the mining industry. In order to create a conducive environment to ensure diversity as well as participation of Black Persons at all decision-making positions and core occupational categories in the mining industry, a right holder must achieve a minimum threshold of Black Persons which is reflective of the provincial or national demographics as follows:

SECRET AND STRICTLY CONFIDENTIAL**2.4.1 BOARD**

A minimum of 50% Black Persons with exercisable voting rights proportionally represented, 20% of which must be black women.

2.4.2 EXECUTIVE/TOP MANAGEMENT

A minimum of 50% Black Persons at the executive directors' level as a percentage of all executive directors proportionally represented, 15% of which must be black women.

2.4.3 SENIOR MANAGEMENT

A minimum of 50% Black Persons in Senior Management proportionally represented, 15% of which must be black women.

2.4.4 MIDDLE MANAGEMENT

A minimum of 60% of Black Persons in Middle Management proportionally represented, 20% of which must be black women.

2.4.5 JUNIOR MANAGEMENT

A minimum of 70% Black Persons in Junior Management proportionally represented, 25% of which must be black women.

2.4.6 EMPLOYEES WITH DISABILITIES

A minimum of 1.5% employees with disabilities as a percentage of all employees, reflective of national or provincial demographics.

SECRET AND STRICTLY CONFIDENTIAL**2.4.7 CORE AND CRITICAL SKILLS**

A right holder must ensure that a minimum of 60% Black Persons are represented in the right holder's core and critical skills by diversifying its existing pools. Core and critical skills must include science, technology, engineering and mathematical skills representation across all organisational levels. To achieve this, a right holder must:

- (a) Identify and implement its existing pools in line with the approved Social and Labour Plan.
- (b) The abovementioned implementation must be reflective of demographics.

Career progression (aligned with Social and Labour Plan)

A right holder must develop and implement a career progression plan consistent with the demographics of the country by providing the following:

- (a) Career development matrices of each discipline (inclusive of minimum entry requirements and timeframes);
- (b) Develop individual development plans for employees;
- (c) Identify a talent pool to be fast tracked in line with the needs; and
- (d) Provide a comprehensive plan with targets, timeframes and how the plan would be implemented.

The above prescribed board and executive/top management targets must include BEE shareholders in line with the *MPRDA's* and *Mining Charter* objectives for black person's active participation in the management and control of the mining industry. The targets

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indicated under this element may change in order to address employment equity measures.

2.5 MINE COMMUNITY DEVELOPMENT

Mine communities form an integral part of mining development, which requires a balance between mining and mine community's socio-economic development needs. A right holder must meaningfully contribute towards Mine Community Development with biasness towards mine communities both in terms of impact, in keeping with the principles of the social license to operate.

To this end, a right holder must, in consultation with relevant municipalities, mine communities, traditional authorities and affected stakeholders identify developmental priorities of mine communities. The identified developmental priorities must be contained in the prescribed and approved Social and Labour Plan of a right holder.

Mining right holders operating in the same area, may collaborate on identified projects to maximise the socio-economic developmental impact in line with approved Social and Labour Plans. Approved Social and Labour Plan must be published in English and one or two other languages commonly used within the mine community.

For purposes of implementation of Social and Labour Plans and Mine Community Development projects the term "Mine Community" refers to communities where mining takes place, major labour sending areas, adjacent communities within a local municipality, metropolitan municipality and/or district municipality.

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Mechanisms, measures and targets applicable to Mine Community Development shall be provided for in the Social and Labour Plan.

Any amendments/variation of Social and Labour Plan commitments including the budget shall be approved in terms of section 102 of the MPRDA and consulted with mine communities.

Social and Labour Plan Guidelines shall be reviewed to provide clear targets and timelines for implementation of the aforesaid mine community development principles.

2.6 HOUSING AND LIVING CONDITIONS

Human dignity and privacy of mine employees are still the hallmarks to enhance productivity and expedite transformation in the mining industry in terms of housing and living conditions. In this regard, mining companies must improve the standard of housing and living conditions of mine employees as stipulated in the Housing and Living Conditions Standard for the Mining and Minerals Industry developed in terms of *Section 100* of the *MPRDA*. The Standard provides, amongst others, the following principles:

2.6.1 PRINCIPLES OF HOUSING CONDITIONS

- Decent and affordable housing,
- Centrality of home ownership,
- Provision for social, physical and economic integrated human settlements,
- Measures to address housing demand,
- Involvement of mine employees in the housing administrative system, and

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- Secure tenure for mine employees in housing institutions.

2.6.2 PRINCIPLES OF WORKING CONDITIONS

- Proper health care services,
- Affordable, equitable and sustainable health system, and
- Balanced nutrition.

A right holder shall further be required to submit a Housing and Living Conditions Plan which must be approved by the Department after consultation with organised labour and the Department of Human Settlement.

Housing and Living Conditions Standard shall be reviewed to provide clear targets and timelines for the implementation of the aforesaid housing and living conditions principles.

3. APPLICATION OF THE MINING CHARTER TO LICENCES GRANTED UNDER THE PRECIOUS METALS ACT, 2005 AND THE DIAMONDS ACT, 1986.

The *Diamonds Act, 1986* and the *Precious Metals Act, 2005* makes provision for the South African Diamond and Precious Metals Regulator to have regard to the requirements of the *Mining Charter* when considering applications lodged in terms of these Acts.

The targets and elements of the *Mining Charter* shall therefore apply to licenses under these Acts in line with the table below:

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CATEGORY/SIZE OR CLASS	QUALIFYING CRITERIA	EXEMPT FROM THE FOLLOWING TARGETS	REQUIRED TO COMPLY WITH THE FOLLOWING TARGETS
Exempted Micro Enterprises (including students)	Estimated max turnover less than R1 Million.	Ownership	Sustainable Development and growth of the minerals industry.
		Human Resource Development	
		Procurement	
		Employment Equity	
		Mine Community Development	
Qualifying Small and Micro Enterprises (QSME's)	Estimated max turnover R1 Million to R3.8 Million.	Ownership	Employment Equity ²
		Mine Community Development	Human Resource Development ³
			Procurement and supplier and enterprise development.
			Sustainable Development and growth of the minerals industry.
			Ownership ¹

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Medium and Large Entities	Estimated max turnover greater than R3.8 million.	Mine Community Development	Employment Equity ²
			Human Resource Development ³
			Procurement and supplier and enterprise development
			Sustainable Development and growth of the minerals industry.

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**ELEMENTS OF THE MINING CHARTER APPLICABLE TO LICENSEES UNDER THE
PRECIOUS METALS ACT, 2005 AND THE DIAMONDS ACT, 1986 AS AMENDED****OWNERSHIP**

- (a) In line with the Government policies to encourage beneficiation of the country's mineral resources, the ownership target for the downstream diamonds and precious metals industry is a minimum of 18% in the hands of black people per licensee to enable meaningful economic participation of Black Persons, taking into account the provisions of *section 37(2) of the Companies Act, 2008 (Act No. 71 of 2008)*.
- (b) The Black Persons shareholding indicated above shall comprise of BEE Entrepreneurs and workers and must hold 40% ownership of net value based upon the time based graduation factor.
- (c) Taking into account the extent of the exemption in terms of the above table, a permit or license holder in terms of the *Precious Metals Act and the Diamonds Act* is required to comply with all the relevant elements and targets as set out in this Charter.

SECRET AND STRICTLY CONFIDENTIAL**4. REPEAL OF SECTION/PARAGRAPH 3 OF THE CODES OF GOOD PRACTICE FOR THE MINERALS INDUSTRY**

Section/paragraph 3 of the *Codes of Good Practice for the Minerals Industry* published in *Government Gazette No. 32167 of 29 April 2009* is hereby repealed.

5. REPORTING (MONITORING AND COMPLIANCE)

A right holder must report its level of compliance with the *Mining Charter* annually, as provided for by *Section 28 (2) (c)* of the *MPRDA*. The Department shall monitor and evaluate implementation, taking into account the impact of material constraints which may result in non-achievement of the set target.

6. APPLICABILITY OF THE MINING CHARTER

The *Mining Charter* applies to existing mining rights, pending mining right applications and new mining rights as provided for herein.

The *Mining Charter* shall also apply to prospecting rights as contemplated in section 17(4) of the *MPRDA*.

The Ownership element is ring fenced, which requires 100% compliance at all times.

In respect of Junior Miners, a right holder may make representations to the Minister regarding the extent to which the *Mining Charter* elements shall apply.

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7. TRANSITIONAL ARRANGEMENTS

A right holder must align existing targets progressively from the *Mining Charter, 2014* targets within the transitional period to meet the revised as follows:

- (a) Five (5) years for the inclusive procurement element. A right holder must within six (6) months from the date of publication of the *Mining Charter*, submit a five-year plan indicating progressive implementation of inclusive procurement targets.
- (b) Compliance with procurement targets within the transitional period shall be as follows:
 - (i) **Mining Goods:** The first-year target is set at 10% of the procurement budget, second year 20% of the procurement budget, 35% of the procurement budget by third year, 50% of the procurement budget by fourth year and 70% of the procurement budget by fifth year.
- (c) **Services:** The first-year target is set at 70% of the procurement budget, second year 80% of the procurement budget. Five (5) years for the Employment Equity element. A right holder must within a period of six (6) months from the date of publication of the *Mining Charter, 2018* submit a five-year plan indicating progressive implementation of the provisions of Employment Equity element targets.
- (d) A right holder must comply with the Housing and Living Conditions Standard and ensure that it maintains single units and family units and any other agreement which has been reached with workers pending the finalisation of the Reviewed Housing and Living Conditions Standard.

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- (e) At the end of the transition period, a right holder must maintain compliance with the *Mining Charter* targets for the duration of a mining right.
- (f) A right holder's performance shall be reported, audited and verified annually against each element in respect of implementation for the applicable transitional period.

8. NON-COMPLIANCE

A right holder who has not complied with the ownership element and falls between levels 6 and 8 of the Mining Charter score-card will be regarded as non-compliant with the provisions of the Charter and in breach of the MPRDA and will be dealt with in terms of section 93 read in conjunction with section 47, 98 and 99 of the Act.

9. REVIEW OF THE CHARTER

The Minister may, by notice in the Gazette review the Mining Charter.

10. REPEAL OF PREVIOUS MINING CHARTERS

The Broad-Based Socio-Economic Empowerment Charter for the Mining Industry published in 2004, as amended in 2010 and the Broad-Based Socio-Economic empowerment Charter for the Mining and Minerals Industry, 2017, published on 15 June 2017, are hereby amended by the repeal and substitution thereof for the Broad-Based Socio-Economic Empowerment Charter for the Mining and Mineral Industry, 2018.

SECRET AND STRICTLY CONFIDENTIAL**11. INTERPRETATION OF THE MINING CHARTER**

The *Mining Charter* shall be read and interpreted in conjunction with MPRDA where words are not defined, and a meaning thereof has been ascribed in the aforementioned legislation.

Any reference to Black Persons, BEE entrepreneurs or Black women shall refer to Historically Disadvantaged Person (HDP) until such time the MPRDA has been amended.

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SCORECARD: MINING CHARTER REVIEW

Reviewed Mining Charter Scorecard	Weighting %
Ownership	Y/N
Employment Equity	20%
Procurement supplier & Enterprise Development	60%
Human Resource Development	20%
Total	100%

OWNERSHIP

Element Description	Measure	Compliance Target %	Weighting %
Minimum target for representation of BEE shareholders.	Qualifying Employees 5 % Free Carried Interest and 3% financed interest	30% BBEE Ownership	Ringfenced element.
	Mine Community 5 % Free Carried Interest and 3% financed interest.		
	BEE Entrepreneurs 14%		
Trickle dividend	% of EBITDA to be paid to qualifying employees and host communities.	1%	Ringfenced element

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Element Description	Measure	Compliance Target %	Weighting %
HRD expenditure as percentage of total annual leviable amount (excl. mandatory skills development levy).	Invest 3.5% of the leviable amount as defined in the HRD element in proportion to applicable demographics.	3.5%	10%
	Invest 1.5% of the leviable amount towards South African public institutions, Science Councils and research Institutions in proportion to applicable demographics.	1.5%	10%
Sub-total			20%

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INCLUSIVE PROCUREMENT, SUPPLIER AND ENTERPRISE DEVELOPMENT
SCORECARD¹

Element Description	Measure	Compliance Target %	Weighting %
Goods Procurement: A minimum of 70% of the total mining goods procurement budget must be spent on South African manufactured goods with a 60%+ local content value must be sourced from compliant manufacturing companies. ²	Percentage of the total mining goods procurement budget spent on South African manufactured goods by BEE Entrepreneurs.	21%	10%
	Percentage of the total goods procurement budget spent on South African manufactured goods from companies BEE Women Entrepreneurs or Youth owned and controlled company	5%	5%
	Percentage of the total goods procurement spend on South African manufactured goods from BEE compliant companies	44%	5%
Services Procurement: A minimum of 80% of the total spend on services must be sourced from South African based companies. The abovementioned 80% of the total services procurement spend shall be apportioned in the following manner. ¹	Percentage of total services budget spent on services from BEE Entrepreneurs	60%	5%
	Percentage of total services budget spent on services from BEE compliant companies	10%	5%
	Percentage of total services budget spent on services from companies who are 51% youth owned and controlled companies or BEE Women Entrepreneurs	10%	10%
Percentage of samples analyses using South African based facilities: Utilise South African based facilities for the analysis of mineral samples across the mining value chain	% of samples analysed using South African based facilities	100%	5%

¹ See transitional arrangements for progressive targets to be met during the transitional period.

² Calculation of goods and services spend does not include non-discretionary such as spend on buildings, roads, utilities (electricity and water) and land rates.

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except in cases where samples are analysed for the purpose of verification of the accuracy of local laboratories.			
Research and Development A minimum of 70% of the right holder's research and development budget must be spent in South Africa	% of research and development budget spent in South Africa	70%	10%
Contribution by foreign suppliers	% of revenue as defined in the element.	0.5%	5%
Sub-total			60%

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EMPLOYMENT EQUITY

Element Description				Compliance Target %	Weighting %
Board:					
Africans	Coloureds	Indians		50%	2%
Black women as a percent of all Board representatives				20%	2%
Executive/ Top Management					
Africans	Coloureds	Indians		50%	2%
Black women as a percentage of all executive directors.				15%	2%
Senior Management:					
Africans	Coloureds	Indians		50%	2%
Black women as a percentage of all senior managers.				15%	2%
Middle Management:					
Africans	Coloureds	Indians		60%	2%
Black women as a percentage of all middle managers.				20%	2%
Junior Management:					
Africans	Coloureds	Indians		70%	1%
Black women as a percentage of all junior managers.				25 %	1%
Employees with disabilities:					
Africans	Coloureds	Indians	Whites	1,5%	1%
Male	Women				

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Core and Critical Skills:				
Africans	Coloureds	Indians	60%	1%
Male	Women			
Sub-total				20%

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Annexure A

This annexure provides an alignment between the DTI BBEEE and DMR scorecard.

DTI LEVELS	DMR SCORECARD	Ring Fenced Element + percentage weighting
Level 1	Ring fenced Element + 100%	Compliant
Level 2	Ring fenced Element+ 80 -100%	
Level 3	Ring fenced Element + 70-80%	
Level 4	Ring fenced Element + 60-70%	
Level 5	Ring fenced Element + 50-60%	
Level 6	Ring fenced Element + 40-50%	<50 % Non- Compliant
Level 7	Ring fenced Element + 30 -40%	
Level 8	Ring fenced Element + 20 -30%	
Non-Compliant	Ring fenced Element + <20%	
Non-Compliant	Ring fenced Element not met + weighted element score	

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